Supreme Court of the United States.

No. 118.—October Term, 1904.

The Northern Pacific Railway Company, Plaintiff in Error, vs. August Hasse and —— Hasse, his Wife. } In error to the Supreme Court of the State of Washington.

[February 20, 1905.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was an action of ejectment brought by the Northern Pacific Railway Company in the Superior Court of Kittitas County, Washington, to recover possession of part of its right of way, the land being partly within and partly without a right of way of two hundred feet in width. Defendants asserted title by virtue of a homestead application, filed May 24, 1883, final proof July 12, 1888, and patent September 27, 1889; and adverse possession for the period named in the statute of limitations. Judgment was entered in favor of the railway company, and defendants carried the case by appeal to the Supreme Court of Washington, which held the statute of limitations applicable, reversed the judgment below and remanded the case with directions to dismiss the action. 28 Wash. 583.

The grant of right of way, unlike the land grant, was effective from the date of the act, and the fact that the railroad was not built until after defendants' entry does not affect the disposition of the case. *Railroad Company* v. *Baldwin*, 103 U. S. 426; *Bybee* v. *Oregon & California Railroad Company*, 139 U. S. 663, 679.

The judgment must be reversed on the authority of *Northern Pacific Railway Company* v. *Townsend*, 190 U. S. 267, and remanded for further proceedings not inconsistent with the opinion of this court in *Northern Pacific Railway Company* v. *Ely*, *ante*, p. —

Judgment reversed.

Mr. Justice Harlan dissented.

True copy.

Test:

Clerk Supreme Court, U. S.